(4)

AMENDED PETITION

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR [C.G.]

WRIT PETITION NO.2061/1995

PETITIONER : Suresh Sao, aged about 36 years, S/o Late Ramcharan Sao, Proprietor, Sanjay and Brothers, R/o Shastri chowk, Camp No.1, P.S.-chhawni, Bhilai Nagar, Distt-Durg, M.P. (Semi Whole-Sale Dealer of Kerosene-License No. 90/D/88)

VERSUS

RESPONDENTS : 1) State of Madhya Pradesh, Through: the Secretary, Department of Food & Civil Supplies, Vallabh Bhawan, Bhopal, M.P.

2) The Collector and Licensing Authority under the (M.P. kerosene Dealers Licensing Order) 1979, Durg, M.P.

3) Addl. Commissioner, Raipur Divn. Raipur.

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA AND THE M.P. KEROSENE DEALERS LICENSING ORDER, 1979 AND KEROSENE (RESTRICTION ON USE AND FIXATION OF CEILING PRICE) ORDER, 1993.

XI-HC-22

(112)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.-2061/95 **सन्** 200

..... **विरुद्ध** .....

आदेश का क्रमांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4-8-2005

Mr. Uttam Pandey, counsel for the petitioner.

Mr. Ravi Ranjan Sinha, Panel Lawyer for the State/respondents.

Heard both the counsel.

The petitioner, who was a semi-wholesale dealer of kerosene oil, has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the legality and propriety of order dated 30th May, 1995, passed by the Additional Commissioner, Raipur Division, Raipur, in Appeal No.85/C-149, 94-95 (Suresh Sao vs. State), whereby the learned Additional Commissioner dismissed the appeal of the petitioner being time barred, and also questioning the legality and propriety of order dated 3-12-1994 passed by the Collector & Licensing Authority under the M.P. Kerosene Dealers Licensing Orders, 1979, Durg, whereby licence of the petitioner has been cancelled and security amount has also been ordered to be forfeited.

Brief facts leading to filing of this writ petition are that the petitioner's firm Sanjay and Brothers was granted kerosene dealership on 12-9-1988. The petitioner was required to comply with the terms and conditions of licence issued under the Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993 (hereinafter referred to as 'the Order' 1993). The licence was granted to the petitioner under the

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(13)

आदेश पत्रक

मामला क्रमांक W.P.2061/95 **सन्** ~~200~~

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Madhya Pradesh Kerosene Dealers Licensing Order, 1979 (hereinafter referred to as 'the Order, 1979').

The Food Inspectors namely, B.S. Sharma & Tarachand Tiwari conducted search at the business premises of the petitioner on 9-2-1994 and thereafter, they filed a complaint on 13-2-1994 regarding violation of Clause 3 (2) of the Order, 1993. On search, the Food Inspectors found that there was no pagination in the stock register & sale register, the registers were not even certified by the Food Department, and the petitioner herein had not sent the monthly statements. On inspection, it was found that the source of obtaining kerosene oil was not mentioned in the monthly statements. During the inspection, it was also found that according to the quota which was given to the petitioner for sale through hawkers the kerosene to the quantity of 372 liters was not given to the hawkers during the months from November, 1993 to January, 1994. Some other irregularities were also found. It is also found that prescribed monthly quota of the petitioner was 18,000 liters against which the petitioner lifted 37,600 liters in November, 1993; 39,600 liters in December, 1993; and 35,400 liters in January, 1994. Thereafter, the petitioner without any authority/ written order, as against 18,000 liters, sold 29,500 liters in November, 1993; 47,700 liters in December, 1993; and 27,300 liters in January, 1994, thereby he sold the quantity of 50,500 liters of kerosene oil

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.2061/95 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

illegally. Thereafter, a show cause notice was issued to the petitioner for explaining, reply of which was given by the petitioner. However, the licensing authority i.e. the Collector, Durg, was not satisfied with the explanation, and accordingly vide order dated 3-12-1994 cancelled the licence and also forfeited the security amount. Against this order, the petitioner moved an appeal, which was dismissed being barred by three days.

In this petition, the petitioner along with other grounds has raised one of the grounds that B.S. Sharma & Tarachand Tiwari, the Food Inspectors, were not authorized for search and seizure on 9-2-1994, as they were not empowered by the State Government and the Central Government under Clause 9 of the Order, 1993. This point has been specifically raised in para 5.6 of the petition, but same has not been replied by the State/respondents.

In the reply filed by the State/respondents, the State has mentioned that as per decision of the Government, semi-wholesale dealers are not entitled to have licence after March, 1992, and the licence period of the petitioner has already expired, therefore, the writ petition has become infructuous.

Having heard learned counsel for the parties and having regard to the facts and circumstances of the case, learned Panel Lawyer for the State/respondents was not able to argue or explain before the Court

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that B.S. Sharma & Tarachand Tiwari were authorized to conduct search under Clause 9 of the Order, 1993. Clause 9 (a) of the Order, 1993 envisages that

> "An Officer of the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorized by such Government and notified by the Central Government or any officer authorized and notified by the Central Government, or any Officer not below the rank of a Sales Officer of a Government Oil Company authorized by the Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this Order, with such assistance as may be required for the purpose of satisfying himself that this Order or any Order made thereunder has been complied with—
>
> (i) stop and search any vessel or vehicle or any other conveyance which the Officer has reason to believe, has been, or is being, or is about to be used in contravention of this Order;
>
> (ii) enter or search any place with such aid or assistance, as may be necessary; and
>
> (iii) seize and remove with such aid or assistance, as may be necessary."

Therefore, B.S. Sharma and Tarachand Tiwari were not authorized under this provision to conduct search and enter premises, as such, the

(116)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.2061/95 **सन्** ~~200~~

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

search was without any authority and same is contrary to the provisions of Clause 9 of the Order, 1993. Hence, based on that search, the Collector was not entitled to take cognizance of that report and pass the impugned order. Therefore, merely on the ground that B.S. Sharma & Tarachand Tiwari, without any authority entered the premises and conducted the search, the order impugned is liable to be set aside.

In the circumstances, the impugned order dated 3-12-1994 passed by the Collector and the consequent appellate order are set aside.

Learned counsel for the petitioner argued that on account of pendency of this writ petition, the petitioner had not applied for renewal of licence, therefore, he may be allowed to apply for licence.

On the other hand, reply of the State/respondents is that after March, 1992, semi-wholesale dealers' licences are not being renewed as per the policy decision.

Therefore, it is for the petitioner to move appropriate authority for grant of licence, and it is for that authority to decide his application, in accordance with law.

With the above observations, the petition stands disposed of.

Sd/-
L.C. Bhadoo
Judge

soma

06.8.05

(पीछे देखिये)